

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SUMIYO TANAKA

Appeal 2007-0353
Application 09/255,352
Technology Center 2100

Decided: June 28, 2007

Before JAMES D. THOMAS, JOSEPH F. RUGGIERO, and JOSEPH L. DIXON, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Final Rejection of claims 1-32. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellant's invention relates to image searching in which common key image feature values are extracted from a user specified plurality of key

images and used to retrieve images from a plurality of images stored in an image database. The extracted common key image feature values are compared with the plurality of images stored in the image database to determine similarities between each of the common key image feature values and respective ones of the database image feature values for each of the plurality of stored database images.

Claim 1 is illustrative of the invention and reads as follows:

1. An image searching system comprising:
 - an image database storing a plurality of database images, each of said plurality of database images having a plurality of features;
 - a specifying controller for specifying a plurality of key images, each of said plurality of key images being specified by a user and having a respective plurality of features;
 - an extracting controller for extracting common key image feature values for common key image features that are common to the plurality of key images;
 - a calculating controller for comparing the common key image feature values, extracted by the extracting controller, with the respective feature values of the plurality of database images to thereby sequentially calculate similarities between each of the common key image feature values and respective ones of the database image feature values for each of the plurality of database images; and
 - a searching controller for retrieving from the database at least one of the plurality of database images which is similar to the plurality of key images, based on a similarity calculated by the calculating controller.

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The Examiner relies on the following prior art reference to show unpatentability:

Sato US 6,246,804 B1 Jun. 12, 2001
(filed Nov. 14, 1995)

Claims 1-32, all of the appealed claims, stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sato.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Brief and Answer for the respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Brief have not been considered and are deemed waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

ISSUE

Under 35 U.S.C § 102(e), does Sato have a disclosure which anticipates the invention set forth in claims 1-32?

PRINCIPLES OF LAW

It is axiomatic that anticipation of a claim under § 102 can be found if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76, 77 USPQ2d 1321, 1325-26 (Fed. Cir. 2005),

citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565, 24 USPQ2d 1321, 1326 (Fed. Cir. 1992). Anticipation of a patent claim requires a finding that the claim at issue “reads on” a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346, 51 USPQ2d 1943, 1945 (Fed. Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

ANALYSIS

With respect to the 35 U.S.C. § 102(e) rejection of independent claims 1, 4, 7, 11, 14, 17, 21, 24, 27, 31, and 32 based on the teachings of Sato, the Examiner indicates (Answer 3-6) how the various limitations are read on the disclosure of Sato. In particular, the Examiner directs attention to the illustrations in Figures 1, 21, 31, and 32 of Sato, as well as the disclosure at various portions of columns 1, 5, 14, 21, 22, and 27 of Sato.

Appellant’s arguments in response assert that the Examiner has not shown how each of the claimed features is present in the disclosure of Sato so as to establish a *prima facie* case of anticipation. Appellant’s arguments (Br. 11) focus on the contention that, in contrast to the language of the appealed claims which requires the determination of common key image feature values from a user specified plurality of key images to be used as search criteria, Sato never makes any determination of any common feature values in the user designated image information to be used for comparison with stored images in a database.

After reviewing the disclosure of Sato in light of the arguments of record, we are in general agreement with Appellant's position as stated in the Brief. We would point out that we don't necessarily agree with Appellant that Sato uses only a single designated image as a source for search criteria. We find in Sato a suggestion that the designated input image 100 (Figure 5, col. 7, ll. 52-60 and Figure 21) is segmented into regions which, in our view, could reasonably be interpreted as being a plurality of images.

We do agree with Appellant, however, that Sato is not concerned with, and never makes any determination of, any features in the designated input image, or the plurality of designated input segments, that might be common to each other. As argued by Appellant (Br. 10-11), the portions of Sato cited by the Examiner describe the comparison search for features of images in the stored database which might be common to the features in the designated image, or segmented regions of the designated image, to determine which stored images might be the best matches for the designated input image. Sato, however, never performs any comparison of feature values in the designated input image, or regions thereof, to determine any common features that might exist. As a consequence, Sato never uses, as search criteria, the common feature values of the designated input or input regions as required by each of the appealed independent claims.

In view of the above discussion, since all of the claim limitations are not present in the disclosure of Sato, we do not sustain the Examiner's 35 U.S.C. § 102(e) rejection of independent claims 1, 4, 7, 11, 14, 17, 21, 24, 27, 31, and 32, nor of claims 2, 3, 5, 6, 8-10, 12, 13, 15, 16, 18-20, 22, 23, 25, 26, and 28-30 dependent thereon.

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CONCLUSION

In summary, we have not sustained the Examiner's 35 U.S.C. § 102(e) rejection of any of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-32 is reversed.

REVERSED

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